

Age 70½ — Opt-in / Opt-out

Background

To start retirement benefits, an eligible member must separate from service and apply to the Department of Retirement Systems, regardless of age. Federal law for private plans, which does not apply to the Washington State Retirement Systems, allows distributions to begin at age 70½. For a period between 1988 and 1991 it was thought that the federal requirements applied to the state, and legislation was enacted allowing distribution at 70½ so long as the federal requirement was in place. The state law was repealed shortly thereafter.

Legislators can choose to begin membership upon entering office, but once they choose to participate their decision is irrevocable.

Committee Activity

Presentations:

August 17, 2004 - Executive Committee

November 9, 2004 - Full Committee

Subgroup Activity:

October 19, 2004 - Subgroup Meeting

Proposal:

November 9, 2004 - Full Committee

Recommendation to Legislature

Allow PERS, SERS, and TRS members who have reached age 70½ to retire and return to work without restriction, and allow members holding state elective office the option at the beginning of each term of office, to continue active membership or to retire and begin receiving their retirement allowance.

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Select Committee on Pension Policy

Age 70½ and Opt-in/Opt-out

(December 21, 2004)

Subgroup Proposal

Allow members of PERS, SERS, and TRS who have attained age 70½ to retire and return to work without restriction. Such individuals would continue to draw a salary but would cease active membership in their plans and would no longer accumulate service credit. The provision would not apply to state elected officials unless they leave elected office or are reelected after the effective date of the act.

Also allow members of TRS Plans 2 and 3, SERS, and PERS holding state elective office the option, at the beginning of each term of office, to continue active membership or to retire and begin receiving their retirement allowance

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Members Impacted

This proposal would impact all PERS, SERS, and TRS members who desire to work beyond age 70½, and all members of PERS, SERS, and TRS 2/3 who hold state elective office.

As of the 2003 valuation there were 502 vested members of PERS, SERS, and TRS who were still working at age 70½.

At last count there were 139 state elective officials who were plan members without other public employment.

Current Situation

After separating from employment for one month, PERS and SERS retirees may return to work for up to 867 hours in a calendar year before their benefit is suspended. PERS 1 retirees who separated for 3 months may return to work for up to 1,500 hours in a calendar year before their benefit is suspended.

After separating from employment for one month, TRS 1 retirees may return to work for up to 1,500 hours in a school year before their benefit is suspended. After separating from employment for one month, TRS 2/3 retirees may return to work for up to 867 hours in a school year before their benefit is suspended.

State elected official members of most Washington State Retirement Systems and plans must separate from service in order to retire and begin receiving their retirement benefits, regardless of age. TRS 1 is the exception in permitting state elected officials who are TRS 1 members, if otherwise eligible, to begin receiving their retirement benefit while serving in state elective office. The LEOFF 1 Plan also allows retired members to work for any non-LEOFF employer without a reduction of their benefits.

History

During the 2002 Interim, the Joint Committee on Pension Policy (JCPP) forwarded companion bills SB 5093 and HB 1209 to the 2003 legislature. These bills would have allowed members of PERS, SERS, and TRS Plans 1, 2 and 3 who have attained age 70½ and meet the vesting requirements of their plan to apply for retirement benefits without requiring that they separate from service. Such retirees would not be allowed to continue to make contributions and earn service credit. The bill passed in the Senate but did not receive a hearing in the House.

The JCPP also forwarded companion bills HB 1201 and SB 5095 to the 2003 legislature. This legislation would have allowed PERS, SERS, TRS 2/3, or LEOFF 2 members holding state elective office the option, at the beginning of each term of office, of continuing active membership or retiring and beginning their retirement allowance. SB 5095 passed the Senate. HB 1201 did not receive a hearing in the House.

Policy Analysis

The age 70½ issue was originally thought to involve compliance to federal rules mandating distribution of retirement allowances at age 70½. When it was discovered that those rules applied to private plans, the state provisions were repealed. This issue has now evolved from one in which older members may receive retirement benefits without separating from employment, to a post-retirement employment issue where members must separate from employment before being eligible for the benefit. This would establish a new policy in the post-retirement employment arena.

The opt-in/opt-out issue is one in which inconsistencies already exist in the provisions of the various systems and plans. This proposal would remove much of that inconsistency, and standardize the optional membership of elected officials in a manner similar to existing TRS 1 provisions.

Executive Committee Recommendation

Forward the subgroup proposal to the full committee for public hearing.

Bill (Draft)

Attached

Fiscal Note (Draft)

Attached

1 AN ACT Relating to allowing certain members of the teachers',
2 school employees', and public employees' retirement systems to return
3 to work without restrictions or begin receiving their retirement
4 allowance before separation from state elective office; amending RCW
5 41.32.010, 41.32.263, 41.35.030, and 41.40.023; adding a new section to
6 chapter 41.32 RCW; adding a new section to chapter 41.35 RCW; and
7 adding a new section to chapter 41.40 RCW.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.32 RCW
10 to read as follows:

11 A member who retires on or after attainment of age seventy and one-
12 half and enters employment with an employer at least one month after
13 his or her accrual date may continue to receive pension payments while
14 engaged in such service without restriction. The retiree is no longer
15 an active member and may not make contributions, or receive service
16 credit, for future periods of employment while receiving his or her
17 retirement allowance. This section does not apply to any member who is
18 a state elected official unless that member leaves elected office or is
19 reappointed or reelected after the effective date of this act.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.35 RCW
2 to read as follows:

3 A member who retires on or after attainment of age seventy and one-
4 half and enters employment with an employer at least one month after
5 his or her accrual date may continue to receive pension payments while
6 engaged in such service without restriction. The retiree is no longer
7 an active member and may not make contributions, or receive service
8 credit, for future periods of employment while receiving his or her
9 retirement allowance. This section does not apply to any member who is
10 a state elected official unless that member leaves elected office or is
11 reappointed or reelected after the effective date of this act.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.40 RCW
13 to read as follows:

14 A member who retires on or after attainment of age seventy and one-
15 half and enters employment with an employer at least one month after
16 his or her accrual date may continue to receive pension payments while
17 engaged in such service without restriction. The retiree is no longer
18 an active member and may not make contributions, or receive service
19 credit, for future periods of employment while receiving his or her
20 retirement allowance. This section does not apply to any member who is
21 a state elected official unless that member leaves elected office or is
22 reappointed or reelected after the effective date of this act.

23 **Sec. 4.** RCW 41.32.010 and 2003 c 31 s 1 are each amended to read
24 as follows:

25 As used in this chapter, unless a different meaning is plainly
26 required by the context:

27 (1)(a) "Accumulated contributions" for plan 1 members, means the
28 sum of all regular annuity contributions and, except for the purpose of
29 withdrawal at the time of retirement, any amount paid under RCW
30 41.50.165(2) with regular interest thereon.

31 (b) "Accumulated contributions" for plan 2 members, means the sum
32 of all contributions standing to the credit of a member in the member's
33 individual account, including any amount paid under RCW 41.50.165(2),
34 together with the regular interest thereon.

35 (2) "Actuarial equivalent" means a benefit of equal value when

1 computed upon the basis of such mortality tables and regulations as
2 shall be adopted by the director and regular interest.

3 (3) "Annuity" means the moneys payable per year during life by
4 reason of accumulated contributions of a member.

5 (4) "Member reserve" means the fund in which all of the accumulated
6 contributions of members are held.

7 (5)(a) "Beneficiary" for plan 1 members, means any person in
8 receipt of a retirement allowance or other benefit provided by this
9 chapter.

10 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
11 in receipt of a retirement allowance or other benefit provided by this
12 chapter resulting from service rendered to an employer by another
13 person.

14 (6) "Contract" means any agreement for service and compensation
15 between a member and an employer.

16 (7) "Creditable service" means membership service plus prior
17 service for which credit is allowable. This subsection shall apply
18 only to plan 1 members.

19 (8) "Dependent" means receiving one-half or more of support from a
20 member.

21 (9) "Disability allowance" means monthly payments during
22 disability. This subsection shall apply only to plan 1 members.

23 (10)(a) "Earnable compensation" for plan 1 members, means:

24 (i) All salaries and wages paid by an employer to an employee
25 member of the retirement system for personal services rendered during
26 a fiscal year. In all cases where compensation includes maintenance
27 the employer shall fix the value of that part of the compensation not
28 paid in money.

29 (ii) For an employee member of the retirement system teaching in an
30 extended school year program, two consecutive extended school years, as
31 defined by the employer school district, may be used as the annual
32 period for determining earnable compensation in lieu of the two fiscal
33 years.

34 (iii) "Earnable compensation" for plan 1 members also includes the
35 following actual or imputed payments, which are not paid for personal
36 services:

37 (A) Retroactive payments to an individual by an employer on
38 reinstatement of the employee in a position, or payments by an employer

1 to an individual in lieu of reinstatement in a position which are
2 awarded or granted as the equivalent of the salary or wages which the
3 individual would have earned during a payroll period shall be
4 considered earnable compensation and the individual shall receive the
5 equivalent service credit.

6 (B) If a leave of absence, without pay, is taken by a member for
7 the purpose of serving as a member of the state legislature, and such
8 member has served in the legislature five or more years, the salary
9 which would have been received for the position from which the leave of
10 absence was taken shall be considered as compensation earnable if the
11 employee's contribution thereon is paid by the employee. In addition,
12 where a member has been a member of the state legislature for five or
13 more years, earnable compensation for the member's two highest
14 compensated consecutive years of service shall include a sum not to
15 exceed thirty-six hundred dollars for each of such two consecutive
16 years, regardless of whether or not legislative service was rendered
17 during those two years.

18 (iv) For members employed less than full time under written
19 contract with a school district, or community college district, in an
20 instructional position, for which the member receives service credit of
21 less than one year in all of the years used to determine the earnable
22 compensation used for computing benefits due under RCW 41.32.497,
23 41.32.498, and 41.32.520, the member may elect to have earnable
24 compensation defined as provided in RCW 41.32.345. For the purposes of
25 this subsection, the term "instructional position" means a position in
26 which more than seventy-five percent of the member's time is spent as
27 a classroom instructor (including office hours), a librarian, or a
28 counselor. Earnable compensation shall be so defined only for the
29 purpose of the calculation of retirement benefits and only as necessary
30 to insure that members who receive fractional service credit under RCW
31 41.32.270 receive benefits proportional to those received by members
32 who have received full-time service credit.

33 (v) "Earnable compensation" does not include:

34 (A) Remuneration for unused sick leave authorized under RCW
35 41.04.340, 28A.400.210, or 28A.310.490;

36 (B) Remuneration for unused annual leave in excess of thirty days
37 as authorized by RCW 43.01.044 and 43.01.041.

1 (b) "Earnable compensation" for plan 2 and plan 3 members, means
2 salaries or wages earned by a member during a payroll period for
3 personal services, including overtime payments, and shall include wages
4 and salaries deferred under provisions established pursuant to sections
5 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
6 shall exclude lump sum payments for deferred annual sick leave, unused
7 accumulated vacation, unused accumulated annual leave, or any form of
8 severance pay.

9 "Earnable compensation" for plan 2 and plan 3 members also includes
10 the following actual or imputed payments which, except in the case of
11 (b)(ii)(B) of this subsection, are not paid for personal services:

12 (i) Retroactive payments to an individual by an employer on
13 reinstatement of the employee in a position or payments by an employer
14 to an individual in lieu of reinstatement in a position which are
15 awarded or granted as the equivalent of the salary or wages which the
16 individual would have earned during a payroll period shall be
17 considered earnable compensation, to the extent provided above, and the
18 individual shall receive the equivalent service credit.

19 (ii) In any year in which a member serves in the legislature the
20 member shall have the option of having such member's earnable
21 compensation be the greater of:

22 (A) The earnable compensation the member would have received had
23 such member not served in the legislature; or

24 (B) Such member's actual earnable compensation received for
25 teaching and legislative service combined. Any additional
26 contributions to the retirement system required because compensation
27 earnable under (b)(ii)(A) of this subsection is greater than
28 compensation earnable under (b)(ii)(B) of this subsection shall be paid
29 by the member for both member and employer contributions.

30 (11) "Employer" means the state of Washington, the school district,
31 or any agency of the state of Washington by which the member is paid.

32 (12) "Fiscal year" means a year which begins July 1st and ends June
33 30th of the following year.

34 (13) "Former state fund" means the state retirement fund in
35 operation for teachers under chapter 187, Laws of 1923, as amended.

36 (14) "Local fund" means any of the local retirement funds for
37 teachers operated in any school district in accordance with the
38 provisions of chapter 163, Laws of 1917 as amended.

1 (15) "Member" means any teacher included in the membership of the
2 retirement system. Also, any other employee of the public schools who,
3 on July 1, 1947, had not elected to be exempt from membership and who,
4 prior to that date, had by an authorized payroll deduction, contributed
5 to the member reserve.

6 (16) "Membership service" means service rendered subsequent to the
7 first day of eligibility of a person to membership in the retirement
8 system: PROVIDED, That where a member is employed by two or more
9 employers the individual shall receive no more than one service credit
10 month during any calendar month in which multiple service is rendered.
11 The provisions of this subsection shall apply only to plan 1 members.

12 (17) "Pension" means the moneys payable per year during life from
13 the pension reserve.

14 (18) "Pension reserve" is a fund in which shall be accumulated an
15 actuarial reserve adequate to meet present and future pension
16 liabilities of the system and from which all pension obligations are to
17 be paid.

18 (19) "Prior service" means service rendered prior to the first date
19 of eligibility to membership in the retirement system for which credit
20 is allowable. The provisions of this subsection shall apply only to
21 plan 1 members.

22 (20) "Prior service contributions" means contributions made by a
23 member to secure credit for prior service. The provisions of this
24 subsection shall apply only to plan 1 members.

25 (21) "Public school" means any institution or activity operated by
26 the state of Washington or any instrumentality or political subdivision
27 thereof employing teachers, except the University of Washington and
28 Washington State University.

29 (22) "Regular contributions" means the amounts required to be
30 deducted from the compensation of a member and credited to the member's
31 individual account in the member reserve. This subsection shall apply
32 only to plan 1 members.

33 (23) "Regular interest" means such rate as the director may
34 determine.

35 (24)(a) "Retirement allowance" for plan 1 members, means monthly
36 payments based on the sum of annuity and pension, or any optional
37 benefits payable in lieu thereof.

1 (b) "Retirement allowance" for plan 2 and plan 3 members, means
2 monthly payments to a retiree or beneficiary as provided in this
3 chapter.

4 (25) "Retirement system" means the Washington state teachers'
5 retirement system.

6 (26)(a) "Service" for plan 1 members means the time during which a
7 member has been employed by an employer for compensation.

8 (i) If a member is employed by two or more employers the individual
9 shall receive no more than one service credit month during any calendar
10 month in which multiple service is rendered.

11 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
12 sick leave may be creditable as service solely for the purpose of
13 determining eligibility to retire under RCW 41.32.470.

14 (iii) As authorized in RCW 41.32.065, service earned in an out-of-
15 state retirement system that covers teachers in public schools may be
16 applied solely for the purpose of determining eligibility to retire
17 under RCW 41.32.470.

18 (b) "Service" for plan 2 and plan 3 members, means periods of
19 employment by a member for one or more employers for which earnable
20 compensation is earned subject to the following conditions:

21 (i) A member employed in an eligible position or as a substitute
22 shall receive one service credit month for each month of September
23 through August of the following year if he or she earns earnable
24 compensation for eight hundred ten or more hours during that period and
25 is employed during nine of those months, except that a member may not
26 receive credit for any period prior to the member's employment in an
27 eligible position except as provided in RCW 41.32.812 and
28 41.50.132((+)).

29 (ii) If a member is employed either in an eligible position or as
30 a substitute teacher for nine months of the twelve month period between
31 September through August of the following year but earns earnable
32 compensation for less than eight hundred ten hours but for at least six
33 hundred thirty hours, he or she will receive one-half of a service
34 credit month for each month of the twelve month period((+)).

35 (iii) All other members in an eligible position or as a substitute
36 teacher shall receive service credit as follows:

37 (A) A service credit month is earned in those calendar months where
38 earnable compensation is earned for ninety or more hours;

1 (B) A half-service credit month is earned in those calendar months
2 where earnable compensation is earned for at least seventy hours but
3 less than ninety hours; and

4 (C) A quarter-service credit month is earned in those calendar
5 months where earnable compensation is earned for less than seventy
6 hours.

7 (iv) Any person who is a member of the teachers' retirement system
8 and who is elected or appointed to a state elective position may
9 continue to be a member of the retirement system and continue to
10 receive a service credit month for each of the months in a state
11 elective position by making the required member contributions.

12 (v) Any member of the teachers' retirement system plan 2 or plan 3
13 who is elected to the state legislature has the option during a ninety-
14 day period at the beginning of each term of office either to resume
15 membership or to end membership in the retirement system and if
16 otherwise eligible begin their retirement allowance. A state
17 legislator who chooses to end membership at the beginning of a term of
18 office and begin their retirement allowance shall neither make
19 contributions nor earn service credit for the duration of that term.

20 (vi) Any member of the teachers' retirement system plan 2 or plan
21 3 who is elected to a state elective position other than the state
22 legislature has the option during a ninety-day period at the beginning
23 of each term of office either to resume membership or to end membership
24 in the retirement system and if otherwise eligible begin their
25 retirement allowance. A state elected official other than a state
26 legislator who chooses to end membership at the beginning of a term of
27 office and begin their retirement allowance shall neither make
28 contributions nor earn service credit for the duration of that term.

29 (vii) When an individual is employed by two or more employers the
30 individual shall only receive one month's service credit during any
31 calendar month in which multiple service for ninety or more hours is
32 rendered.

33 ~~((+vi))~~ (viii) As authorized by RCW 28A.400.300, up to forty-five
34 days of sick leave may be creditable as service solely for the purpose
35 of determining eligibility to retire under RCW 41.32.470. For purposes
36 of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is
37 equal to two service credit months. Use of less than forty-five days

1 of sick leave is creditable as allowed under this subsection as
2 follows:

3 (A) Less than eleven days equals one-quarter service credit month;

4 (B) Eleven or more days but less than twenty-two days equals one-
5 half service credit month;

6 (C) Twenty-two days equals one service credit month;

7 (D) More than twenty-two days but less than thirty-three days
8 equals one and one-quarter service credit month;

9 (E) Thirty-three or more days but less than forty-five days equals
10 one and one-half service credit month.

11 (~~((vii))~~) (ix) As authorized in RCW 41.32.065, service earned in an
12 out-of-state retirement system that covers teachers in public schools
13 may be applied solely for the purpose of determining eligibility to
14 retire under RCW 41.32.470.

15 (~~((viii))~~) (x) The department shall adopt rules implementing this
16 subsection.

17 (27) "Service credit year" means an accumulation of months of
18 service credit which is equal to one when divided by twelve.

19 (28) "Service credit month" means a full service credit month or an
20 accumulation of partial service credit months that are equal to one.

21 (29) "Teacher" means any person qualified to teach who is engaged
22 by a public school in an instructional, administrative, or supervisory
23 capacity. The term includes state, educational service district, and
24 school district superintendents and their assistants and all employees
25 certificated by the superintendent of public instruction; and in
26 addition thereto any full time school doctor who is employed by a
27 public school and renders service of an instructional or educational
28 nature.

29 (30) "Average final compensation" for plan 2 and plan 3 members,
30 means the member's average earnable compensation of the highest
31 consecutive sixty service credit months prior to such member's
32 retirement, termination, or death. Periods constituting authorized
33 leaves of absence may not be used in the calculation of average final
34 compensation except under RCW 41.32.810(2).

35 (31) "Retiree" means any person who has begun accruing a retirement
36 allowance or other benefit provided by this chapter resulting from
37 service rendered to an employer while a member.

1 (32) "Department" means the department of retirement systems
2 created in chapter 41.50 RCW.

3 (33) "Director" means the director of the department.

4 (34) "State elective position" means any position held by any
5 person elected or appointed to statewide office or elected or appointed
6 as a member of the legislature.

7 (35) "State actuary" or "actuary" means the person appointed
8 pursuant to RCW 44.44.010(2).

9 (36) "Substitute teacher" means:

10 (a) A teacher who is hired by an employer to work as a temporary
11 teacher, except for teachers who are annual contract employees of an
12 employer and are guaranteed a minimum number of hours; or

13 (b) Teachers who either (i) work in ineligible positions for more
14 than one employer or (ii) work in an ineligible position or positions
15 together with an eligible position.

16 (37)(a) "Eligible position" for plan 2 members from June 7, 1990,
17 through September 1, 1991, means a position which normally requires two
18 or more uninterrupted months of creditable service during September
19 through August of the following year.

20 (b) "Eligible position" for plan 2 and plan 3 on and after
21 September 1, 1991, means a position that, as defined by the employer,
22 normally requires five or more months of at least seventy hours of
23 earnable compensation during September through August of the following
24 year.

25 (c) For purposes of this chapter an employer shall not define
26 "position" in such a manner that an employee's monthly work for that
27 employer is divided into more than one position.

28 (d) The elected position of the superintendent of public
29 instruction is an eligible position.

30 (38) "Plan 1" means the teachers' retirement system, plan 1
31 providing the benefits and funding provisions covering persons who
32 first became members of the system prior to October 1, 1977.

33 (39) "Plan 2" means the teachers' retirement system, plan 2
34 providing the benefits and funding provisions covering persons who
35 first became members of the system on and after October 1, 1977, and
36 prior to July 1, 1996.

37 (40) "Plan 3" means the teachers' retirement system, plan 3

1 providing the benefits and funding provisions covering persons who
2 first become members of the system on and after July 1, 1996, or who
3 transfer under RCW 41.32.817.

4 (41) "Index" means, for any calendar year, that year's annual
5 average consumer price index, Seattle, Washington area, for urban wage
6 earners and clerical workers, all items compiled by the bureau of labor
7 statistics, United States department of labor.

8 (42) "Index A" means the index for the year prior to the
9 determination of a postretirement adjustment.

10 (43) "Index B" means the index for the year prior to index A.

11 (44) "Index year" means the earliest calendar year in which the
12 index is more than sixty percent of index A.

13 (45) "Adjustment ratio" means the value of index A divided by index
14 B.

15 (46) "Annual increase" means, initially, fifty-nine cents per month
16 per year of service which amount shall be increased each July 1st by
17 three percent, rounded to the nearest cent.

18 (47) "Member account" or "member's account" for purposes of plan 3
19 means the sum of the contributions and earnings on behalf of the member
20 in the defined contribution portion of plan 3.

21 (48) "Separation from service or employment" occurs when a person
22 has terminated all employment with an employer.

23 (49) "Employed" or "employee" means a person who is providing
24 services for compensation to an employer, unless the person is free
25 from the employer's direction and control over the performance of work.
26 The department shall adopt rules and interpret this subsection
27 consistent with common law.

28 **Sec. 5.** RCW 41.32.263 and 1991 c 35 s 41 are each amended to read
29 as follows:

30 A member of the retirement system who is a member of the state
31 legislature or a state official eligible for the combined pension and
32 annuity provided by RCW 41.32.497((7)) or 41.32.498(~~(7, as now or~~
33 ~~hereafter amended)~~) shall have deductions taken from his or her salary
34 in the amount of seven and one-half percent of earnable compensation
35 and that service credit shall be established with the retirement system
36 while such deductions are reported to the retirement system, unless he
37 or she has by reason of his or her employment become a contributing

1 member of another public retirement system in the state of Washington.
2 Such elected official who has retired or otherwise terminated his or
3 her public school service may then elect to terminate his or her
4 membership in the retirement system and receive retirement benefits
5 while continuing to serve as an elected official. A member of the
6 retirement system who had previous service as an elected or appointed
7 official, for which he or she did not contribute to the retirement
8 system, may receive credit for such legislative service unless he or
9 she has received credit for that service in another state retirement
10 system, upon making contributions in such amounts as shall be
11 determined by the ((~~board of trustees~~)) director.

12 **Sec. 6.** RCW 41.35.030 and 2003 c 157 s 2 are each amended to read
13 as follows:

14 Membership in the retirement system shall consist of all regularly
15 compensated classified employees and appointive and elective officials
16 of employers, as defined in this chapter, with the following
17 exceptions:

18 (1) Persons in ineligible positions;

19 (2)(a) Persons holding elective offices or persons appointed
20 directly by the governor: PROVIDED, That such persons shall have the
21 option of applying for membership during such periods of employment:
22 AND PROVIDED FURTHER, That any persons holding or who have held
23 elective offices or persons appointed by the governor who are members
24 in the retirement system and who have, prior to becoming such members,
25 previously held an elective office, and did not at the start of such
26 initial or successive terms of office exercise their option to become
27 members, may apply for membership to be effective during such term or
28 terms of office, and shall be allowed to establish the service credit
29 applicable to such term or terms of office upon payment of the employee
30 contributions therefor by the employee with interest as determined by
31 the director and employer contributions therefor by the employer or
32 employee with interest as determined by the director: AND PROVIDED
33 FURTHER, That all contributions with interest submitted by the employee
34 under this subsection shall be placed in the employee's individual
35 account in the employee's savings fund and be treated as any other
36 contribution made by the employee, with the exception that any
37 contributions submitted by the employee in payment of the employer's

1 obligation, together with the interest the director may apply to the
2 employer's contribution, shall not be considered part of the member's
3 annuity for any purpose except withdrawal of contributions;

4 (b) A member holding elective office other than state elective
5 office who has elected to apply for membership pursuant to (a) of this
6 subsection and who later (~~wishes to be~~) is eligible for a retirement
7 allowance shall have the option of ending his or her membership in the
8 retirement system. A member (~~wishing to end~~) ending his or her
9 membership under this subsection must file on a form supplied by the
10 department a statement indicating that the member agrees to irrevocably
11 abandon any claim for service for future periods served as an elected
12 official. A member who receives more than fifteen thousand dollars per
13 year in compensation for his or her elective service, adjusted annually
14 for inflation by the director, is not eligible for the option provided
15 by this subsection (2)(b);

16 (c) Any member of the school employees' retirement system plan 2 or
17 plan 3 who is elected to the state legislature has the option during a
18 ninety-day period at the beginning of each term of office either to
19 resume membership or to end membership in the retirement system and if
20 otherwise eligible begin their retirement allowance. A state
21 legislator who chooses to end membership at the beginning of a term of
22 office and begin their retirement allowance shall neither make
23 contributions nor earn service credit for the duration of that term;

24 (d) Any member of the school employees' retirement system plan 2 or
25 plan 3 who is elected to a state elective position other than the state
26 legislature has the option during a ninety-day period at the beginning
27 of each term of office either to resume membership or to end membership
28 in the retirement system and if otherwise eligible begin their
29 retirement allowance. A state elected official other than a state
30 legislator who chooses to end membership at the beginning of a term of
31 office and begin their retirement allowance shall neither make
32 contributions nor earn service credit for the duration of that term;

33 (3) Retirement system retirees: PROVIDED, That following
34 reemployment in an eligible position, a retiree may elect to
35 prospectively become a member of the retirement system if otherwise
36 eligible;

37 (4) Persons enrolled in state-approved apprenticeship programs,
38 authorized under chapter 49.04 RCW, and who are employed by employers

1 to earn hours to complete such apprenticeship programs, if the employee
2 is a member of a union-sponsored retirement plan and is making
3 contributions to such a retirement plan or if the employee is a member
4 of a Taft-Hartley retirement plan;

5 (5) Persons rendering professional services to an employer on a
6 fee, retainer, or contract basis or when the income from these services
7 is less than fifty percent of the gross income received from the
8 person's practice of a profession;

9 (6) Substitute employees, except for the purposes of the purchase
10 of service credit under rcw 41.35.033. Upon the return or termination
11 of the absent employee a substitute employee is replacing, that
12 substitute employee shall no longer be ineligible under this
13 subsection;

14 (7) Employees who (a) are not citizens of the United States, (b) do
15 not reside in the United States, and (c) perform duties outside of the
16 United States;

17 (8) Employees who (a) are not citizens of the United States, (b)
18 are not covered by chapter 41.48 RCW, (c) are not excluded from
19 membership under this chapter or chapter 41.04 RCW, (d) are residents
20 of this state, and (e) make an irrevocable election to be excluded from
21 membership, in writing, which is submitted to the director within
22 thirty days after employment in an eligible position;

23 (9) Employees who are citizens of the United States and who reside
24 and perform duties for an employer outside of the United States:
25 PROVIDED, That unless otherwise excluded under this chapter or chapter
26 41.04 RCW, the employee may apply for membership (a) within thirty days
27 after employment in an eligible position and membership service credit
28 shall be granted from the first day of membership service, and (b)
29 after this thirty-day period, but membership service credit shall be
30 granted only if payment is made for the noncredited membership service
31 under RCW 41.50.165(2), otherwise service shall be from the date of
32 application.

33 **Sec. 7.** RCW 41.40.023 and 2001 c 37 s 1 are each amended to read
34 as follows:

35 Membership in the retirement system shall consist of all regularly
36 compensated employees and appointive and elective officials of
37 employers, as defined in this chapter, with the following exceptions:

1 (1) Persons in ineligible positions;

2 (2) Employees of the legislature except the officers thereof
3 elected by the members of the senate and the house and legislative
4 committees, unless membership of such employees be authorized by the
5 said committee;

6 (3)(a) Persons holding elective offices or persons appointed
7 directly by the governor: PROVIDED, That such persons shall have the
8 option of applying for membership during such periods of employment:
9 AND PROVIDED FURTHER, That any persons holding or who have held
10 elective offices or persons appointed by the governor who are members
11 in the retirement system and who have, prior to becoming such members,
12 previously held an elective office, and did not at the start of such
13 initial or successive terms of office exercise their option to become
14 members, may apply for membership to be effective during such term or
15 terms of office, and shall be allowed to establish the service credit
16 applicable to such term or terms of office upon payment of the employee
17 contributions therefor by the employee with interest as determined by
18 the director and employer contributions therefor by the employer or
19 employee with interest as determined by the director: AND PROVIDED
20 FURTHER, That all contributions with interest submitted by the employee
21 under this subsection shall be placed in the employee's individual
22 account in the employee's savings fund and be treated as any other
23 contribution made by the employee, with the exception that any
24 contributions submitted by the employee in payment of the employer's
25 obligation, together with the interest the director may apply to the
26 employer's contribution, shall not be considered part of the member's
27 annuity for any purpose except withdrawal of contributions;

28 (b) A member holding elective office other than state elective
29 office who has elected to apply for membership pursuant to (a) of this
30 subsection and who later (~~wishes to be~~) is eligible for a retirement
31 allowance shall have the option of ending his or her membership in the
32 retirement system. A member (~~wishing to end~~) ending his or her
33 membership under this subsection must file, on a form supplied by the
34 department, a statement indicating that the member agrees to
35 irrevocably abandon any claim for service for future periods served as
36 an elected official. A member who receives more than fifteen thousand
37 dollars per year in compensation for his or her elective service,

adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(c) Any member of the public employees' retirement system who is elected to the state legislature has the option during a ninety-day period at the beginning of each term of office either to resume membership or to end membership in the retirement system and if otherwise eligible begin their retirement allowance. A state legislator who chooses to end membership at the beginning of a term of office and begin their retirement allowance shall neither make contributions nor earn service credit for the duration of that term;

(d) Any member of the public employees' retirement system who is elected to a state elective position other than the state legislature has the option during a ninety-day period at the beginning of each term of office either to resume membership or to end membership in the retirement system and if otherwise eligible begin their retirement allowance. A state elected official other than a state legislator who chooses to end membership at the beginning of a term of office and begin their retirement allowance shall neither make contributions nor earn service credit for the duration of that term;

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

1 (d) Except as provided in RCW 41.40.109, on or after July 25, 1999,
2 an employee shall not be excluded from membership or denied service
3 credit pursuant to this subsection solely on account of participation
4 in a defined contribution pension plan qualified under section 401 of
5 the internal revenue code;

6 (e) Employees who have been reported in the retirement system prior
7 to July 25, 1999, and who participated during the same period of time
8 in a defined contribution pension plan qualified under section 401 of
9 the internal revenue code and operated wholly or in part by the
10 employer, shall not be excluded from previous retirement system
11 membership and service credit on account of such participation;

12 (5) Patient and inmate help in state charitable, penal, and
13 correctional institutions;

14 (6) "Members" of a state veterans' home or state soldiers' home;

15 (7) Persons employed by an institution of higher learning or
16 community college, primarily as an incident to and in furtherance of
17 their education or training, or the education or training of a spouse;

18 (8) Employees of an institution of higher learning or community
19 college during the period of service necessary to establish eligibility
20 for membership in the retirement plans operated by such institutions;

21 (9) Persons rendering professional services to an employer on a
22 fee, retainer, or contract basis or when the income from these services
23 is less than fifty percent of the gross income received from the
24 person's practice of a profession;

25 (10) Persons appointed after April 1, 1963, by the liquor control
26 board as agency vendors;

27 (11) Employees of a labor guild, association, or organization:
28 PROVIDED, That elective officials and employees of a labor guild,
29 association, or organization which qualifies as an employer within this
30 chapter shall have the option of applying for membership;

31 (12) Retirement system retirees: PROVIDED, That following
32 reemployment in an eligible position, a retiree may elect to
33 prospectively become a member of the retirement system if otherwise
34 eligible;

35 (13) Persons employed by or appointed or elected as an official of
36 a first class city that has its own retirement system: PROVIDED, That
37 any member elected or appointed to an elective office on or after April
38 1, 1971, shall have the option of continuing as a member of this system

1 in lieu of becoming a member of the city system. A member who elects
2 to continue as a member of this system shall pay the appropriate member
3 contributions and the city shall pay the employer contributions at the
4 rates prescribed by this chapter. The city shall also transfer to this
5 system all of such member's accumulated contributions together with
6 such further amounts as necessary to equal all employee and employer
7 contributions which would have been paid into this system on account of
8 such service with the city and thereupon the member shall be granted
9 credit for all such service. Any city that becomes an employer as
10 defined in RCW 41.40.010(4) as the result of an individual's election
11 under this subsection shall not be required to have all employees
12 covered for retirement under the provisions of this chapter. Nothing
13 in this subsection shall prohibit a city of the first class with its
14 own retirement system from: (a) Transferring all of its current
15 employees to the retirement system established under this chapter, or
16 (b) allowing newly hired employees the option of continuing coverage
17 under the retirement system established by this chapter.

18 Notwithstanding any other provision of this chapter, persons
19 transferring from employment with a first class city of over four
20 hundred thousand population that has its own retirement system to
21 employment with the state department of agriculture may elect to remain
22 within the retirement system of such city and the state shall pay the
23 employer contributions for such persons at like rates as prescribed for
24 employers of other members of such system;

25 (14) Employees who (a) are not citizens of the United States, (b)
26 do not reside in the United States, and (c) perform duties outside of
27 the United States;

28 (15) Employees who (a) are not citizens of the United States, (b)
29 are not covered by chapter 41.48 RCW, (c) are not excluded from
30 membership under this chapter or chapter 41.04 RCW, (d) are residents
31 of this state, and (e) make an irrevocable election to be excluded from
32 membership, in writing, which is submitted to the director within
33 thirty days after employment in an eligible position;

34 (16) Employees who are citizens of the United States and who reside
35 and perform duties for an employer outside of the United States:
36 PROVIDED, That unless otherwise excluded under this chapter or chapter
37 41.04 RCW, the employee may apply for membership (a) within thirty days
38 after employment in an eligible position and membership service credit

1 shall be granted from the first day of membership service, and (b)
2 after this thirty-day period, but membership service credit shall be
3 granted only if payment is made for the noncredited membership service
4 under RCW 41.50.165(2), otherwise service shall be from the date of
5 application;

6 (17) The city manager or chief administrative officer of a city or
7 town, other than a retiree, who serves at the pleasure of an appointing
8 authority: PROVIDED, That such persons shall have the option of
9 applying for membership within thirty days from date of their
10 appointment to such positions. Persons serving in such positions as of
11 April 4, 1986, shall continue to be members in the retirement system
12 unless they notify the director in writing prior to December 31, 1986,
13 of their desire to withdraw from membership in the retirement system.
14 A member who withdraws from membership in the system under this section
15 shall receive a refund of the member's accumulated contributions.

16 Persons serving in such positions who have not opted for membership
17 within the specified thirty days, may do so by paying the amount
18 required under RCW 41.50.165(2) for the period from the date of their
19 appointment to the date of acceptance into membership;

20 (18) Persons serving as: (a) The chief administrative officer of
21 a public utility district as defined in RCW 54.16.100; (b) the chief
22 administrative officer of a port district formed under chapter 53.04
23 RCW; or (c) the chief administrative officer of a county who serves at
24 the pleasure of an appointing authority: PROVIDED, That such persons
25 shall have the option of applying for membership within thirty days
26 from the date of their appointment to such positions. Persons serving
27 in such positions as of July 25, 1999, shall continue to be members in
28 the retirement system unless they notify the director in writing prior
29 to December 31, 1999, of their desire to withdraw from membership in
30 the retirement system. A member who withdraws from membership in the
31 system under this section shall receive a refund of the member's
32 accumulated contributions upon termination of employment or as
33 otherwise consistent with the plan's tax qualification status as
34 defined in internal revenue code section 401.

35 Persons serving in such positions who have not opted for membership
36 within the specified thirty days, may do so at a later date by paying
37 the amount required under RCW 41.50.165(2) for the period from the date
38 of their appointment to the date of acceptance into membership;

1 (19) Persons enrolled in state-approved apprenticeship programs,
2 authorized under chapter 49.04 RCW, and who are employed by local
3 governments to earn hours to complete such apprenticeship programs, if
4 the employee is a member of a union-sponsored retirement plan and is
5 making contributions to such a retirement plan or if the employee is a
6 member of a Taft-Hartley retirement plan;

7 (20) Beginning on July 22, 2001, persons employed exclusively as
8 trainers or trainees in resident apprentice training programs operated
9 by housing authorities authorized under chapter 35.82 RCW, (a) if the
10 trainer or trainee is a member of a union-sponsored retirement plan and
11 is making contributions to such a retirement plan or (b) if the
12 employee is a member of a Taft-Hartley retirement plan.

--- END ---

DRAFT FISCAL NOTE

REQUEST NO.

RESPONDING AGENCY:

CODE:

DATE:

BILL NUMBER:

Office of the State Actuary

035

11/03/2004

Z-0195.2/Z-0196.2

SUMMARY OF BILL:

This bill impacts the Public Employee's Retirement System, School Employee's Retirement System, and Teachers Retirement System Plans 2 and 3 by allowing members who retire on or after age seventy and one-half, and who fulfill the 1 month separation requirement, to return to work without restriction; upon receipt of retirement benefits such an individual would cease active membership and no longer make contributions nor receive service credit. Current state elected and appointed officials are exempt from this act unless they leave elected office, or are re-elected after the effective date of the act.

The bill also allows state elective officials the option to continue or resume membership, and if otherwise eligible, retire and receive their retirement allowance at the beginning of each term of office. A state elected official member who chooses to end membership at the beginning of a term of office shall neither make contributions nor earn service credit for the duration of that term.

Effective Date: 90 days after session.

CURRENT SITUATION:

After a one-month separation, PERS, SERS, and TRS 2/3 retirees may return to work for 867 hours per calendar year or school year before their benefit is suspended. PERS 1 members may return to work after a 3-month separation and work up to 1,500 hours per calendar year before their benefit is suspended. TRS 1 members may return to work after a one-month separation and work for up to 1,500 hours per school year before their benefit is suspended.

State elected official members of most Washington State Retirement Systems and plans must separate from service in order to retire and begin receipt of their retirement benefits regardless of age. While the rules for state elected officials vary by system and plan, the Teachers' Retirement System Plan 1 is a notable distinction in permitting state elected officials, if otherwise eligible, to begin their retirement benefit while serving in state elective office.

MEMBERS IMPACTED:

We estimate that potentially all active members in these systems could be affected by the age 70 1/2 portion of this bill. Active members currently over age 70 1/2 would be impacted on the effective date of the bill. This includes 342 out of 154,550 active members in PERS, 28 out of 66,075 in TRS, and 132 out of 49,214 in SERS.

We estimate that relatively few members in these systems could be affected by the opt in/opt out portion of this bill, although nearly all members could potentially become elected officials. The opt in/opt out portion of the bill would impact the current state elected officials in the systems if they are reelected following the effective date. This includes 129 active members in PERS, 1 in TRS (not including 4 in TRS 1 who already have the opt in/opt out provision), and 0 in SERS.

We estimate that a typical member impacted by the age 70 1/2 provision of this bill would receive a benefit of about \$11,700 per year, but would give up additional benefit accruals of about \$1,000 per year. For example, a PERS member who retired at age 74 with 19 years of service would receive an annual benefit of \$13,200; waiting one additional year to retire would result in an annual benefit of \$14,400. A typical SERS member who retired at age 74 with 12 years of service would receive an annual benefit of \$4,600; waiting one additional year to retire would result in an annual benefit of \$5,200. The impact on long service members over age 70 1/2, and not subject to the 30 year service cap, is greater than the impact on short service members.

ASSUMPTIONS:

Our current retirement rate assumptions have all members retiring at age 70 or earlier. The members over 70 1/2 who continue working after we have assumed they will retire typically produce an actuarial experience gain to the system. In general, the benefits earned for each year of additional service and increases in pay after age 70 are not as valuable as the retirement benefits that could have been received in the year. This is especially true for Plan 1 members who already have hit the 30 year maximum on service.

To determine the cost of the age 70 1/2 provision, we started with an assumption change for the retirement rates at age 70 and beyond. For PERS and SERS, we replaced our 100% retirement assumption at age 70 with 25% per year from age 70 to 81 and 100% at age 82. We did not change the rates before age 70. For TRS, we did not change our 100% assumption at age 70, because the number of active TRS members working past age 70 is not significant compared to PERS and SERS, and the oldest active TRS member is 77, compared to 87 in both PERS and SERS. So we would not expect any significant cost impact for TRS.

For PERS and SERS, we compared the costs of the plans with the new retirement assumption to the costs using an alternative retirement assumption. We increased the 25% rate to 37.5% as an estimate of how many more active members over age 70 1/2 would retire after the bill is effective.

FISCAL IMPACT:

Description:

The postponed retirements after age 70 1/2 currently produce actuarial gains to the affected systems. The age 70 1/2 portion of the bill would reduce these gains. We estimate that the reduction of these gains represents a cost of \$6.0 million in PERS 1, \$11.6 million in PERS 2/3 and \$1.4 million in SERS 2/3 (on a fully projected present value basis).

The opt in/opt out provision of this bill would apply to a small group of members and the associated cost would be insufficient to increase contribution rates in the affected systems.

Actuarial Determinations:

The bill will impact the actuarial funding of the system by increasing the required actuarial contribution rate as shown below:

Increase in Contribution Rates: (Effective 9/1/2005)	PERS	TRS	SERS
Employee	0.02%	0.00%	0.02%
Employer	0.03%	0.00%	0.03%

Fiscal Budget Determinations:

As a result of the higher required contribution rate, the increase in funding expenditures is projected to be:

Costs (in Millions):	PERS	TRS	SERS	Total
2005-2007				
State:				
General Fund	\$0.8	0.0	0.4	\$1.2
Non-General Fund	<u>1.3</u>	<u>0.0</u>	<u>0.0</u>	<u>1.3</u>
Total State	2.1	0.0	0.4	2.5
Local Government	1.9	0.0	0.4	2.3
Total Employer	4.0	0.0	0.8	4.8
Total Employee	\$1.8	0.0	0.2	\$2.0
2007-2009				
State:				
General Fund	\$1.0	0.0	0.4	\$1.4
Non-General Fund	<u>1.6</u>	<u>0.0</u>	<u>0.0</u>	<u>1.6</u>
Total State	2.6	0.0	0.4	3.0
Local Government	2.3	0.0	0.4	2.7
Total Employer	4.9	0.0	0.8	5.7
Total Employee	\$2.0	0.0	0.2	\$2.2

Costs (in Millions):	PERS	TRS	SERS	Total
2005-2030				
State:				
General Fund	\$15.5	0.0	4.3	\$19.8
Non-General Fund	<u>25.5</u>	<u>0.0</u>	<u>0.0</u>	<u>25.5</u>
Total State	41.0	0.0	4.3	45.3
Local Government	36.3	0.0	3.8	40.1
Total Employer	77.3	0.0	8.1	85.4
Total Employee	\$28.7	0.0	1.3	\$30.0

STATEMENT OF DATA AND ASSUMPTIONS USED IN PREPARING THIS FISCAL NOTE:

The costs presented in this fiscal note are based on our understanding of the bill as well as generally accepted actuarial standards of practice including the following:

1. Costs were developed using the same membership data, methods, assets and assumptions as those used in preparing the September 30, 2003 actuarial valuation report of the Washington Public Employees' Retirement System, the Teachers' Retirement system, and the Washington School Employees' Retirement System.
2. As with the costs developed in the actuarial valuation, the emerging costs of the System will vary from those presented in the valuation report or this fiscal note to the extent that actual experience differs from that projected by the actuarial assumptions.
3. Additional assumptions used to evaluate the cost impact of the bill which were not used or disclosed in the actuarial valuation report include the following:
4. The analysis of this bill does not consider any other proposed changes to the system. The combined effect of several changes to the system could exceed the sum of each proposed change considered individually.
5. This fiscal note is intended for use only during the 2005 Legislative Session.
6. The funding method used for Plan 1 utilizes the Plan 2/3 employer/state rate as the Normal Cost and amortizes the remaining liability (UAAL) by the year 2024. Benefit increases to Plan 2/3 will change the UAAL in Plan 1. The cost of benefit increases to Plan 1 increases the UAAL.
7. Plan 2/3 utilizes the Aggregate Funding Method. The cost of Plan 2/3 is spread over the average working lifetime of the current active Plan 2/3 members.
8. The entry age normal cost increase for the bill is 0.01% for PERS Plan 2 members, 0.01% for PERS employers, 0.00% for TRS employers, and 0.00% for SERS employers. The entry age normal cost increase was used to determine the increase in funding expenditures for future new entrants.

GLOSSARY OF ACTUARIAL TERMS:

Actuarial Present Value: The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of Actuarial Assumptions (i.e. interest rate, rate of salary increases, mortality, etc.)

Projected Benefits: Pension benefit amounts which are expected to be paid in the future taking into account such items as the effect of advancement in age as well as past and anticipated future compensation and service credits.

Normal Cost: Computed differently under different funding methods, the normal cost generally represents the portion of the cost of projected benefits allocated to the current plan year.

Unfunded Actuarial Accrued Liability (UAAL): The cost of Plan 1 is divided into two pieces:

- The Normal Cost portion is paid over the working lifetime of the Plan 1 active members. The remaining cost is called the UAAL.
- The UAAL is paid for by employers as a percent of the salaries of all plan 1, 2 and 3 members until the year 2024.

Pension Benefit Obligation (PBO): The portion of the Actuarial Present Value of future benefits attributable to service credit that has been earned to date (past service).

Unfunded Liability (Unfunded PBO): The excess, if any, of the Pension Benefit Obligation over the Valuation Assets. This is the portion of all benefits earned to date that are not covered by plan assets.